

1 TROUTMAN SANDERS LLP
2 Terrence R. McInnis, Bar No. 155416
terrence.mcinnis@troutmansanders.com
3 Kevin F. Kieffer, Bar No. 192193
kevin.kieffer@troutmansanders.com
4 Peter R. Lucier, Bar No. 246397
peter.lucier@troutmansanders.com
5 Park Plaza, Suite 1400
6 Irvine, CA 92614-2545
Telephone: 949.622.2700
Facsimile: 949.622.2739

7 *Attorneys for Movants*
8 *Allied World National Assurance Company and*
Allied World Assurance Company (U.S.) Inc.

9
10 UNITED STATES BANKRUPTCY COURT
11
12 EASTERN DISTRICT OF CALIFORNIA

13 In re:
14 SK FOODS, L.P., a California limited
15 partnership,
16 Debtor.

Case No. 09-29162-D-11

Chapter 11

DC No. TRM-1

17 In re:
18 RHM INDUSTRIAL/SPECIALTY
FOODS, INC., a California Corporation,
d/b/a Colusa County Canning Co.,
19 Debtor.

Case No. 09-29161-D-11

Chapter 11

DC No. TRM-1

**DECLARATION OF PETER R. LUCIER
IN SUPPORT OF ALLIED WORLD
NATIONAL ASSURANCE COMPANY
AND ALLIED WORLD ASSURANCE
COMPANY (U.S.) INC.'S MOTION FOR
RELIEF FROM AUTOMATIC STAY**

23 Date: June 23, 2010
24 Time: 10:00 a.m.
25 Place: Department D, Courtroom 34
501 I Street, 6th Floor
Sacramento, CA 95814
26 Judge: Hon. Robert S. Bardwil

1 I, Peter R. Lucier, declare as follows:

2 1. This declaration is made upon my personal knowledge and if called upon as a
3 witness, I could and would competently testify to the facts set forth herein.

4 2. I am an associate at Troutman Sanders LLP, counsel for Allied World National
5 Assurance Company (“Allied World”) and Allied World Assurance Company (U.S.) Inc.
6 (“AWAC”) (collectively “Movants”), and one of the attorneys responsible for the day-to-day
7 handling of this matter.

8 3. Attached hereto as Exhibit 1 is a true and correct copy of a complaint for
9 rescission and other relief that Movants seek to file against SK Foods, L.P. and RHM
10 Industrial/Specialty Foods, Inc. (collectively “Debtors”) and 30 other defendants in a non-
11 bankruptcy forum (the “Rescission Complaint”).

12 4. Allied World issued For Private Companies Policy No. C011427/001 to S.K.
13 Foods PM Corp. for the February 19, 2009 to August 17, 2009 Policy Period (the “Primary
14 Policy”). A true and correct copy of the Primary Policy, including its declarations page, policy
15 form, endorsements and the application form and attachments (but not supporting documentation
16 submitted therewith), is attached as Exhibit A to the Rescission Complaint attached hereto.

17 5. The Insureds also sought an excess policy from AWAC, specifically Excess
18 Directors & Officers Liability Insurance Following Form Policy No. C011818/001, which was to
19 be issued to S.K. Foods PM Corp. for the April 8, 2009 to February 19, 2010 Policy Period (the
20 “Excess Policy”). It is AWAC’s position, however, that SK Foods Group failed to pay the
21 requisite premium to obtain the Excess Policy. Had the Excess Policy been issued, it would be
22 “subject to all terms, conditions, agreements and limitations of the Primary Policy,” unless
23 otherwise provided. (Excess Policy Section II.F.1.)

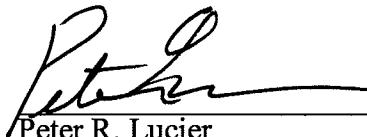
24 6. Attached hereto as Exhibit 2 is a true and correct copy, without enclosures, of
25 correspondence from Kathryn Richter, counsel for Bradley Sharp, Chapter 11 Trustee for the
26 Debtors, dated July 27, 2009, in which Ms. Richter asserts that there is coverage under the
27 Primary and Excess Policies for the adversary complaint filed by the Chapter 11 Trustee on
28 behalf of the Debtors, captioned *Sharp v. Blackstone Ranch Corp., et al.*, A.P. No. 09-02342,

1 Lead Case No. 09-29162 (E.D. Cal. Bankr.).

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on May 26, 2010, at Irvine, California.

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Peter R. Lucier

Exhibit 1

1 TROUTMAN SANDERS LLP
2 Terrence R. McInnis, Bar No. 155416
terrence.mcinnis@troutmansanders.com
3 Kevin F. Kieffer, Bar No. 192193
kevin.kieffer@troutmansanders.com
4 Peter R. Lucier, Bar No. 246397
peter.lucier@troutmansanders.com
5 5 Park Plaza, Suite 1400
Irvine, CA 92614-2545
Telephone: 949.622.2700
6 Facsimile: 949.622.2739

7 *Attorneys for Plaintiffs Allied World National
8 Assurance Company and Allied World Assurance
Company (U.S.) Inc.*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

12 ALLIED WORLD NATIONAL
ASSURANCE COMPANY, a New
13 Hampshire corporation, and ALLIED
WORLD ASSURANCE COMPANY (U.S.)
INC., a Delaware corporation,

Plaintiffs,

V.

17 SK PM CORP., a California corporation aka
18 "S.K. Foods PM Corp.", SK FOODS, L.P., a
19 California limited partnership, FREDERICK
20 SCOTT SALYER, an individual,
21 BLACKSTONE RANCH, a California
22 corporation aka "Blackstone Ranch Calif 'S'
23 Corp," LISA CRIST, an individual, MARK
MCCORMICK, an individual SCOTT
SALYER REVOCABLE TRUST, a trust, THE
CAROLINE GAZELLE SALYER
IRREVOCABLE TRUST, a trust, THE
STEFANIE ANN SALYER IRREVOCABLE
TRUST, a trust, SS FARMS, LLC, a California
limited liability company, SK FOODS, LP

24 (caption continued on next page)

Case No.

COMPLAINT FOR:

1. RESCISSION
2. REFORMATION
3. BREACH OF WARRANTY
4. DECLARATORY RELIEF
5. DECLARATORY RELIEF
6. RESCISSION
7. REFORMATION
8. BREACH OF WARRANTY
9. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 401K PLAN, an ERISA plan aka "SK Foods
2 L.P. Blackstone Ranch & SK Foods L.P. 401K
3 Plan," SARS, LLC, a California limited
4 liability company, CSSS LP, a California
5 limited partnership d/b/a Central Valley
6 Shippers, SK FOODS LLC, a Nevada limited
7 liability company, S.K. FOODS PM CORP., an
8 entity or a d/b/a of unknown legal capacity,
9 SKF AVIATION, LLC, a California limited
10 liability company, SSC FARMING, LLC, a
11 California limited liability company, RHM
12 INDUSTRIAL/SPECIALTY FOODS, INC., a
13 California corporation d/b/a Colusa County
14 Canning Company and d/b/a SK Foods –
15 Colusa Canning, CARMEL WINE
16 MERCHANTS LLC, a California limited
17 liability company, CIRCLE PACIFIC LTD., a
18 New Zealand company, SUNRISE COAST
19 JAPAN, an entity or a d/b/a of unknown legal
capacity, SSC FARMS I, LLC, a California
limited liability company, SSC FARMS II,
LLC, a California limited liability company,
SK FARM SERVICES, LLC, a California
limited liability company, SK FROZEN
FOODS, LLC, a California limited liability
company, SALYER AMERICAN
INSURANCE SERVICES, a California limited
liability company, SSC FARMS III, LLC, a
California limited liability company, SALYER
AMERICAN COOLING, a general
partnership, SALYER WESTERN COOLING
COMPANY, a general partnership, YUMA
AMERICAN COOLING CORPORATION, a
California corporation, SAWTOOTH
COOLING, LLC, a California limited liability
company, and SALYER AMERICAN FRESH
FOODS, a California corporation,

20 Defendants.

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1 Plaintiffs, Allied World National Assurance Company (“Allied World” and Allied World
2 Assurance Company (U.S.) Inc. (“AWAC”) (collectively “Plaintiffs”), are informed and believe
3 and therefore allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is
6 complete diversity between the parties, and the amount in controversy exceeds the sum of
7 \$75,000, exclusive of interest and costs.

8 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) since a
9 substantial part of the events or omissions giving rise to the claims at issue occurred in this
10 District.

11 **THE PARTIES**

12 3. Plaintiff Allied World is a corporation duly organized and existing under the laws
13 of the State of New Hampshire, with its principal place of business in Massachusetts, and as such,
14 is a citizen of New Hampshire and Massachusetts within the meaning of 28 U.S.C. § 1332(c)(1).
15 Allied World is authorized to transact insurance business in the State of California.

16 4. Plaintiff AWAC is a corporation duly organized and existing under the laws of the
17 State of Delaware, with its principal place of business in Massachusetts, and as such, is a citizen
18 of Delaware and Massachusetts within the meaning of 28 U.S.C. § 1332(c)(1). AWAC is
19 authorized to transact insurance business in the State of California.

20 5. Plaintiffs state with good faith belief that Defendant SK PM Corp., also known as
21 (“aka”) “S.K. Foods PM Corp.,” is a corporation duly organized and existing under the laws of
22 the State of California, with its principal place of business in California, and as such, is a citizen
23 of California within the meaning of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

24 6. Plaintiffs state with good faith belief that Defendant SK Foods, L.P. is a California
25 limited partnership whose partners are all citizens of California, and as such, is a citizen of
26 California within the meaning of 28 U.S.C. § 1332(a).

1 7. Plaintiffs state with good faith belief that Defendant Frederick Scott Salyer, aka
2 “Scott Salyer” (“Scott Salyer”) is an individual residing and domiciled in the County of Kings,
3 California, and as such, is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

4 8. Plaintiffs state with good faith belief that Defendant Blackstone Ranch, aka
5 “Blackstone Ranch Calif ‘S’ Corp,” is a corporation duly organized and existing under the laws
6 of the State of California, with its principal place of business in California, and as such, is a
7 citizen of California within the meaning of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

8 9. Plaintiffs state with good faith belief that Defendant Lisa Crist is an individual
9 residing and domiciled in the County of Monterey, California, and as such, is a citizen of
10 California within the meaning of 28 U.S.C. § 1332(a).

11 10. Plaintiffs state with good faith belief that Defendant Mark McCormick is an
12 individual residing and domiciled in the County of Monterey, California, and as such, is a citizen
13 of California within the meaning of 28 U.S.C. § 1332(a).

14 11. Plaintiffs state with good faith belief that Defendant Scott Salyer Revocable Trust
15 (the “SSR Trust”) is a trust for which Scott Salyer is the beneficiary and trustee, and as such, is a
16 citizen of California within the meaning of 28 U.S.C. § 1332(a).

17 12. Plaintiffs state with good faith belief that Defendant The Caroline Gazelle Salyer
18 Irrevocable Trust (the “CGS Trust”) is a trust for which Scott Salyer is the trustee and Caroline
19 Salyer is the beneficiary. Plaintiffs state with good faith belief that Caroline Salyer is an
20 individual residing and domiciled in the County of Monterey, California, and as such, the CGS
21 Trust is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

22 13. Plaintiffs state with good faith belief that Defendant The Stefanie Ann Salyer
23 Irrevocable Trust (the “SAS Trust”) is a trust for which Scott Salyer is the trustee and Stefanie
24 Salyer is the beneficiary. Plaintiffs state with good faith belief that Stefanie Salyer is an
25 individual residing and domiciled in the County of Monterey, California, and as such, the SAS
26 Trust is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

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1 14. Plaintiffs state with good faith belief that Defendant SS Farms, LLC is a California
2 limited liability company whose members are all citizens of California, and as such, SS Farms,
3 LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

4 15. Plaintiffs state with good faith belief that Defendant SK Foods, LP 401K Plan, aka
5 "SK Foods L.P. Blackstone Ranch & SK Foods L.P. 401K Plan" ("SK Foods 401K Plan"), is an
6 ERISA plan located in the State of California whose trustees are citizens of California. As such,
7 SK Foods 401K Plan is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

8 16. Plaintiffs state with good faith belief that Defendant SARS, LLC is a California
9 limited liability company whose members are all citizens of California, and as such, SARS, LLC
10 is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

11 17. Plaintiffs state with good faith belief that Defendant CSSS LP d/b/a Central Valley
12 Shippers ("CSSS LP") is a California limited partnership whose partners are all California
13 citizens, and as such, CSSS, LP is a citizen of California within the meaning of 28 U.S.C. §
14 1332(a).

15 18. Plaintiffs state with good faith belief that Defendant SK Foods LLC is a Nevada
16 limited liability company, whose members are all citizens of California, and as such, SK Foods
17 LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

18 19. Plaintiffs state with good faith belief that Defendant SK Foods PM Corp. is an
19 entity or a d/b/a of unknown legal capacity. Plaintiffs state with good faith belief that SK Foods
20 PM Corp. is not a citizen of Delaware, Massachusetts, or New Hampshire within the meaning of
21 28 U.S.C. § 1332(a).

22 20. Plaintiffs state with good faith belief that Defendant SKF Aviation, LLC is a
23 California limited liability company, whose sole member is a citizen of California, and as such,
24 SKF Aviation, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

25 21. Plaintiffs state with good faith belief that Defendant SSC Farming, LLC is a
26 California limited liability company, whose member are all citizens of California, and as such,
27 SSC Farming, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

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1 22. Plaintiffs state with good faith belief that Defendant RHM Industrial/Specialty
2 Foods, Inc. d/b/a Colusa County Canning Company and d/b/a SK Foods – Colusa Canning is a
3 corporation duly organized and existing under the laws of the State of California, with its
4 principal place of business in California, and as such, is a citizen of California within the meaning
5 of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

6 23. Plaintiffs state with good faith belief that Defendant Carmel Wine Merchants LLC
7 is a California limited liability company, whose sole member is a citizen of California, and as
8 such, Carmel Wine Merchants LLC is a citizen of California within the meaning of 28 U.S.C. §
9 1332(a).

10 24. Plaintiffs state with good faith belief that Defendant Circle Pacific Ltd. is a New
11 Zealand company, and that Circle Pacific Ltd. is not a citizen of Delaware, Massachusetts, or
12 New Hampshire within the meaning of 28 U.S.C. § 1332(a).

13 25. Plaintiffs state with good faith belief that Defendant Sunrise Coast Japan is an
14 entity or a d/b/a of unknown legal capacity. Plaintiffs state with good faith belief that Sunrise
15 Coast Japan is not a citizen of Delaware, Massachusetts, or New Hampshire within the meaning
16 of 28 U.S.C. § 1332(a).

17 26. Plaintiffs state with good faith belief that Defendant SSC Farms I, LLC is a
18 California limited liability company whose members are all citizens of California, and as such,
19 SSC Farms I, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

20 27. Plaintiffs state with good faith belief that Defendant SSC Farms II, LLC is a
21 California limited liability company whose members are all citizens of California, and as such,
22 SSC Farms II, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

23 28. Plaintiffs state with good faith belief that Defendant SK Farm Services, LLC is a
24 California limited liability company whose members are all citizens of California, and as such,
25 SK Farm Services, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

26 29. Plaintiffs state with good faith belief that Defendant SK Frozen Foods, LLC is a
27 California limited liability company whose members are all citizens of California, and as such,
28 SK Frozen Foods, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

1 30. Plaintiffs state with good faith belief that Defendant Salyer American Insurance
2 Services is a California limited liability company whose members are all citizens of California,
3 and as such, Salyer American Insurance Services is a citizen of California within the meaning of
4 28 U.S.C. § 1332(a).

5 31. Plaintiffs state with good faith belief that Defendant SSC Farms III, LLC is a
6 California limited liability company whose members are all citizens of California, and as such,
7 SSC Farms III, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

8 32. Plaintiffs state with good faith belief that Defendant Salyer American Cooling is a
9 general partnership, whose partners are all citizens of California, and as such, Salyer American
10 Cooling is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

11 33. Plaintiffs state with good faith belief that Defendant Salyer Western Cooling
12 Company, is a general partnership, whose partners are all citizens of California, and as such,
13 Salyer Western Cooling Company is a citizen of California within the meaning of 28 U.S.C. §
14 1332(a).

15 34. Plaintiffs state with good faith belief that Defendant Yuma American Cooling
16 Corporation, is a corporation duly organized and existing under the laws of the State of
17 California, with its principal place of business in California, and as such, is a citizen of California
18 within the meaning of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

19 35. Plaintiffs state with good faith belief that Defendant Sawtooth Cooling, LLC is a
20 California limited liability company whose members are all citizens of California, and as such,
21 Sawtooth Cooling, LLC is a citizen of California within the meaning of 28 U.S.C. § 1332(a).

22 36. Plaintiffs state with good faith belief that Defendant Salyer American Fresh Foods,
23 Inc. is a corporation duly organized and existing under the laws of the State of California, with its
24 principal place of business in California, and as such, is a citizen of California within the meaning
25 of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

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INTRODUCTION

37. Plaintiffs file this action to obtain a judicial determination and declaration regarding the parties' rights and obligations with respect to two insurance policies. Defendants are insureds under the primary insurance policy, Policy No. C011427/001, issued by Allied World to S.K. Foods PM Corp. for the February 19, 2009 to August 17, 2009 Policy Period (the "Primary Policy"). Through this action, Allied World seeks to rescind certain specified coverage provisions of the Primary Policy due to, among other things, misrepresentations and concealment of material facts made by Defendants during the underwriting process.

38. Defendants also sought excess coverage from AWAC under Excess Directors & Officers Liability Insurance Following Form Policy No. C011818/001, which was to be issued to S.K. Foods PM Corp. for the April 8, 2009 to February 19, 2010 Policy Period (the "Excess Policy"). However, Defendants never paid the requisite premium for the Excess Policy. Through this action, AWAC seeks a declaration that the Excess Policy was never effectively issued or delivered as a result of the Defendants' non-payment of premium, and is inoperative. AWAC alternatively seeks to rescind certain specified coverage provisions of the Excess Policy due to, among other things, the misrepresentations and concealment of material facts made by Defendants during the underwriting process.

39. Plaintiffs are informed and believe that at the time Defendants applied for the Primary and Excess Policies, Defendants used the name “SK Foods Group” to refer to the affiliated entities owned and operated by Scott Salyer and his family or their trusts that were engaged in the business of growing, harvesting, and shipping various fresh fruits and vegetables, as well as ancillary operations such as vegetable cooling, processing, and packaging. Plaintiffs are informed and believe that SK Foods Group has no separate existence as a legal entity, but includes all entity defendants named in this complaint. SK Foods Group’s operations are largely based in California.

40. As described in further detail below, in connection with the underwriting of the Primary and Excess Policies, Defendants, through their insurance broker, provided Plaintiffs with financial statements for a number of SK Foods Group's entities. Defendants also made certain

1 representations, including that SK Foods Group was in good financial health and had strong
2 revenues and profits for the periods subsequent to those for which they provided financial
3 statements, that certain credit agreements necessary to SK Foods Group's operations that were set
4 to expire would be extended, and that Defendants did not anticipate a reorganization or sale of
5 more than 10% of the assets of any SK Foods Group entities. Plaintiffs recently discovered that
6 these representations were false, and that the financial statements submitted to Plaintiffs were
7 inaccurate and unreliable.

8 41. At the time that negotiations concerning the Primary and Excess Policies were
9 ongoing, the entities comprising SK Foods Group were experiencing significant financial
10 difficulties, and many were either insolvent or on the brink of insolvency. Plaintiffs are informed
11 and believe that Defendants were aware that the joint credit facilities for two of SK Foods
12 Group's major constituents, SK Foods, L.P. ("SK Foods") and RHM Industrial/Specialty Foods,
13 Inc. ("RHM"), would not be renewed. Plaintiffs are also informed and believe that Defendants
14 anticipated that it would be necessary for Salyer American Fresh Foods, Inc. ("SAFF"), SK
15 Foods, and RHM to reorganize, through bankruptcy or otherwise, and sell substantially all of their
16 assets in order to satisfy debts owed by these companies.

17 42. This information came to light only after an investigation following Plaintiffs'
18 receipt of notice of a class-action complaint captioned *Estrada, et al. v. Salyer American, et al.*,
19 Monterey County Superior Court Case No. M99188 (the "Estrada Action"). The *Estrada* Action
20 was filed against SAFF, SK Foods, RHM, SK Frozen Foods, LLC, and others, and alleged, *inter*
21 *alia*, that these entities ceased or substantially ceased their operations as a result of their financial
22 condition, and failed to provide notices to terminated employees that were mandated under
23 federal and state law in connection with their closure.

24 43. Had Plaintiffs known the truth regarding SK Foods Group's financial condition,
25 they would not have issued the Primary Policy, or agreed to issue the Excess Policy upon
26 payment of the requisite premium. Accordingly, pursuant to the terms of the policies, the
27 California Insurance Code, including Insurance Code Sections 331, 359, 447 and 650, and the
28 California Civil Code, including Civil Code Section 1691, Plaintiffs bring this action seeking a

1 judgment of rescission declaring that the coverage provisions of the Primary and Excess Policies
2 specified below are void *ab initio* as to the Defendants herein. This complaint constitutes an offer
3 to return the policy premiums (to the extent any were paid) allocable to the coverage afforded
4 these Defendants. In the event that the Defendants accept this relief, or the Court grants this
5 relief, Plaintiffs will return to SK Foods PM Corp. the amount of the premiums that the Court
6 determines to be allocable to these Defendants. If the Primary and Excess Policies are not
7 rescinded as requested, Plaintiffs, in the alternative, seek to have the Primary and Excess Policies
8 reformed.

9 44. Plaintiffs also seek a declaration that Defendants are liable to Plaintiffs for any
10 payments made by Plaintiffs, including any future payments, to or on behalf of any Insureds,
11 pursuant to Plaintiffs' obligations under any remaining coverage provisions of the Primary or
12 Excess Policies on the grounds that Plaintiffs would not have issued the Primary Policy or agreed
13 to issue the Excess Policy but for Defendants' misrepresentation or concealment of material facts
14 in connection with their application for the Primary and Excess Policies, and that such payments
15 are therefore damages resulting from Defendants' misrepresentations.

FACTUAL BACKGROUND

The Policies

18 45. Allied World issued For Private Companies Policy No. C011427/001 to S.K.
19 Foods PM Corp. for the February 19, 2009 to August 17, 2010 Policy Period (the "Primary
20 Policy"). (The Primary Policy was initially issued with a Policy Period of February 19, 2009 to
21 February 19, 2010. However, the Primary Policy was cancelled effective August 17, 2009 by
22 First Insurance Funding Corp. ("First Insurance"), the company that provided the Insureds with
23 financing for the premium of the Primary Policy.) The Primary Policy, including its declarations
24 page, policy form, endorsements and the application form and attachments (but not supporting
25 documentation submitted therewith), is attached to this Complaint as Exhibit A. AWAC was
26 authorized to and did, in fact, underwrite the Primary Policy on behalf of Allied World.

27 46. SK Foods Group also sought an excess policy from AWAC, specifically Excess
28 Directors & Officers Liability Insurance Following Form Policy No. C011818/001, which was to

1 be issued to S.K. Foods PM Corp. for the April 8, 2009 to February 19, 2010 Policy Period (the
2 “Excess Policy”). SK Foods Group, however, failed to pay the requisite premium to obtain the
3 Excess Policy. Had the Excess Policy been effectively issued, it would be “subject to all terms,
4 conditions, agreements and limitations of the Primary Policy,” unless otherwise provided.
5 (Excess Policy Section II.F.1.)

6 **Application**

7 47. As part of the underwriting process for the Primary and Excess Policies, Arthur J.
8 Gallagher Risk Management Services (“Gallagher & Co.”) provided AWAC with an application
9 that SK Foods Group had previously completed for a St. Paul Travelers policy (the “St. Paul
10 Application”). Plaintiffs are informed and believe that Gallagher & Co. acted as insurance broker
11 and agent for all Defendants in connection with the application for and underwriting of the
12 Primary and Excess Policies.

13 48. Question 6(a) of Part VII of the St. Paul Application asked:

14 “Does the **Applicant** anticipate any of the following in the next 12
15 months:

16 a. Sales, distribution or divestiture of any assets or stock other
17 than in the ordinary course of business in an amount exceeding
18 ten percent (10%) of the **Applicant’s** consolidated assets?

19 49. Question 6(g) of Part VII of the St. Paul Application asked:

20 “Does the **Applicant** anticipate any of the following in the next 12
21 months...”

22 g. Reorganization or arrangement with creditors under federal or
23 state law?”

24 50. The “No” box is checked in response to both questions 6(a) and 6(g). The St. Paul
25 Application defines “**Applicant**” as “the Parent Corporation and all Subsidiaries.” The
26 application lists the Applicant as “SK Foods PM Corp. (see attached list of named insureds).”
27 The attached “SK PM Corp, Named Insured Schedule” includes all Defendants named in this
28 action, with the exception of Lisa Crist and Mark McCormick.

The Warranties

51. On or about February 20, 2009, Gallagher & Co. submitted an “Addendum to the Application, Warranty,” dated February 19, 2009 (the “Primary Warranty”) to AWAC. The Primary Warranty was signed by Scott Salyer as Chief Executive Officer and Chief Financial Officer of SK Foods and SAFF, dated February 19, 2009.

52. The Primary Warranty provides that “with respect to any entity other than Salyer American Fresh Foods, the undersigned officer of the **Named Insured** acknowledges and represents to the best of his or her knowledge that: No **Insured** has knowledge, as of the date below, of any **Wrongful Act** of any **Insured**, or any fact, circumstance or situation which (s)he reasonably believes might result in a **claim** being made against any of the **Insureds**”

53. The Primary Warranty further provides that: “If any **Insured** has knowledge, as of the date below, of any **Wrongful Act** of any of the **Insureds**, or any fact, circumstance, or situation which (s)he reasonably believes might result in a **Claim** being made against any of the **Insureds**, whether or not described above, the Insurer shall not be liable to pay any **Loss** resulting from any and all **Claims** subsequently emanating from such **Wrongful Act** or fact, circumstances, or situation, but solely as to any Insured who possessed knowledge of such fact, circumstance, or situation.”

54. SK Foods Group submitted a second warranty to AWAC for purposes of applying for the Excess Policy (the “Warranty for Higher Limits”). The Warranty for Higher Limits contains identical language to the Primary Warranty, and was signed by Scott Salyer on behalf of SK Foods Group, and dated April 15, 2009.

55. The Primary Warranty and Warranty for Higher Limits both provide that they “will be attached to and become part of the Application for the policy”

Financial Statements

56. As part of the underwriting process, Gallagher & Co. submitted financial statements for certain SK Foods Group entities to Plaintiffs. In particular, Gallagher & Co. submitted audited financial statements for SAFF, which are consolidated to include Salyer American Cooling, LP and Yuma American Cooling, SP, for the years ending December 31,

1 2006 and December 31, 2007. Gallagher & Co. also submitted audited financial statements for
2 SK Foods for the year ending June 30, 2008. Gallagher & Co. also submitted audited
3 consolidated financial statements for SK Foods and RHM for the eight months ending in June 30,
4 2007, as well as unaudited consolidated financial statements for SK Foods and RHM for the
5 second half of 2007. Finally, Gallagher & Co. submitted a one page “Financial Information”
6 sheet for SK Foods and SAFF for 2006 and the first half of 2007.

7 **January 30, 2009 Meeting**

8 57. On January 30, 2009, representatives of SK Foods Group met with AWAC
9 underwriters to discuss SK Foods Group’s operations and financial condition. Mark McCormick,
10 the Executive Vice President and Treasurer of SK Foods, and Lisa Crist, the Executive Vice
11 President of Administration and Human Resources for SK Foods, attended the meeting on behalf
12 of SK Foods Group. McCormick and Crist were authorized to act on behalf of all SK Foods
13 Group entities for the purpose of applying for insurance. In addition, Emily Erickson of
14 Gallagher & Co., SK Foods Group’s broker/agent, was in attendance.

15 58. At this meeting, Plaintiffs’ underwriters made inquiries regarding, among other
16 things: (a) SK Foods Group’s financial performance in 2008; (b) SK Foods Group’s financial
17 outlook for 2009; and (c) SK Foods Group’s credit facilities.

18 59. McCormick and Crist represented to the underwriters that SK Foods Group was in
19 good financial health, that SAFF’s financials were “strong,” and that SK Foods’ financials were
20 “doing better.” McCormick and Crist also represented that although the financials provided to
21 Plaintiffs did not provide a complete picture because they were not consolidated, SK Foods
22 Group’s revenues had increased and were very strong, and that SK Foods Group’s profits were
23 strong.

24 60. Plaintiffs are informed and believe and thereon allege that prior to filing
25 bankruptcy, SK Foods and RHM, as borrowers, and SK Foods, LLC, as guarantor, were party to a
26 credit facility agreement with a number of lenders (the “SK Foods Credit Facilities”) that
27 provided for: (1) a revolving credit facility in the maximum aggregate amount, subject to the
28 maintenance of a specified borrowing base, of (a) \$100 million from July 1, 2008 through

1 February 28, 2009, (b) \$90 million from March 1, 2009 through April 30, 2009, and (c) \$55
2 million after May 1, 2009; (2) a temporary excess loan of \$25 million through March 1, 2009; and
3 (3) a term loan in the amount of \$100 million due July 15, 2009. At the January 30, 2009
4 meeting, McCormick and Crist provided AWAC underwriters with information regarding the SK
5 Foods Credit Facilities, and represented that SK Foods and RHM had come to an agreement with
6 their lenders and that the SK Foods Credit Facilities would be extended.

7 **The Primary and Excess Policies**

8 61. On the basis of the foregoing representations and warranties (among other things),
9 Allied World issued the Primary Policy to S.K. Foods PM Corp., and AWAC would have issued
10 the Excess Policy (had the premium been paid as required).

11 62. The Primary Policy provides that “[it] is agreed that the **Insurer** has relied upon
12 the information contained in the **Application** in issuing this policy.” (Primary Policy General
13 Terms & Conditions Section, Clause 10, as modified by Endorsement No. 6.) “**Application**” is
14 defined as “all signed applications, including any attachments and other materials provided
15 therewith or incorporated therein, submitted in connection with the underwriting of this policy or
16 for any other policy of which this policy is a renewal, replacement or which it succeeds in time.”
17 (Primary Policy General Terms & Conditions Section, Clause 2(a).) The Primary Policy provides
18 that the Application “shall be deemed to be attached to, incorporated into, and made a part of this
19 policy.” (Preamble to the Primary Policy General Terms & Conditions Section.)

20 **Plaintiffs Initiate Investigation**

21 63. Felisa Estrada and Sergio Zamora filed the *Estrada* Action on or about June 1,
22 2009. The defendants in the *Estrada* Action sought coverage for the *Estrada* Action from
23 Plaintiffs under the Primary and Excess Policies. Plaintiffs denied coverage for the *Estrada*
24 Action and reserved all rights under their respective policies, including the right to rescind the
25 Primary and Excess Policies. As a result of the allegations in the *Estrada* Action, Plaintiffs
26 initiated an investigation as to whether Defendants had made misrepresentations or concealed
27 material facts during the underwriting of the Primary and Excess Policies.

SK Foods Group's Poor Financial Condition

64. Through their investigation, Plaintiffs have learned that SK Foods Group and its constituent companies, including but not limited to SK Foods, RHM, and SAFF, were experiencing serious financial difficulties prior to the inception of the Primary Policy and the intended inception of the Excess Policy.

65. Far from being in strong financial health, as Defendants had represented, Plaintiffs are informed and believe that SAFF had, at most, only been profitable in one year during the five year period from 2004 through 2008, and suffered a significant loss in 2008. Plaintiffs are also informed and believe that SAFF suffered a net loss during the first four months of 2009.

66. Plaintiffs are informed and believe that these financial difficulties resulted in part from an investigation initiated in April 2008 by the United States Department of Justice (“DOJ”) into alleged commercial bribery. Plaintiffs are informed and believe that the significant negative publicity associated with the DOJ investigation negatively impacted the ability of the SK Foods Group entities to secure new business and new working capital. SAFF estimates the negative publicity from the DOJ investigation resulted in between \$13 million and \$15 million in lost revenue for SAFF.

67. The SAFF Consolidated Financial Statements for 2006 and 2007 stated that "the [DOJ] investigation has nothing to do with Salyer American Fresh Foods, Inc. and therefore has no impact on the amounts reported in the financial statements as of and for the year ended December 31, 2007." Plaintiffs are informed and believe that this statement was false, in that the DOJ investigation had a significant impact on SAFF's finances as a result of SAFF's relationship with SK Foods.

68. Plaintiffs are informed and believe and thereon allege that SAFF was party to an agreement whereby various lenders, represented by Bank of the West as Administrative Agent, granted SAFF a \$32 million revolving line of credit, subject to the maintenance of a specified borrowing base, and a \$7 million Term Loan (the "SAFF Credit Facilities"). Plaintiffs are informed and believe that as a result of, among other things, SAFF's poor cash flow, SAFF's

1 borrowing base for the SAFF Credit Facilities was reduced to a level which would not allow
2 SAFF to continue operations.

3 69. Plaintiffs are informed and believe and thereon allege that Defendants knew prior
4 to the February 19, 2009 inception of the Primary Policy that SAFF had insufficient cash to
5 continue in business and would have to cease operations, file bankruptcy, or sell the company to
6 new owners.

7 70. In late April 2009, SAFF instructed growers to cease planting crops because it was
8 going out of business. On April 29, 2009, Bank of the West, as administrative agent for itself and
9 other lenders on the SAFF Credit Facilities filed an action captioned *Bank of the West v. Salyer*
10 *American Fresh Foods, et al.*, Monterey County Superior Court Case No. M98573 (the “*Bank of*
11 *the West Action*”) seeking, among other things, the appointment of a receiver to administer
12 substantially all of the assets of SAFF. Steve Franson was appointed receiver over substantially
13 all of the assets of SAFF by court order on May 6, 2009.

14 **SK Foods Employee Pleads Guilty to Fraudulent Sale of Defective Goods**

15 71. Plaintiffs are informed and believe that in addition to investigating commercial
16 bribery, the DOJ’s investigation of SK Foods Group uncovered fraud with respect to the quality
17 of the tomato product that was produced, purchased and sold by SK Foods. Plaintiffs are
18 informed and believe that on February 13, 2009, the United States Attorney filed a Criminal
19 Information against former SK Foods Records and Business Analyst, Jennifer Dahlman, alleging
20 that she participated in causing the shipment of processed tomato products that were adulterated
21 and unsalable domestically due to their excessive mold content. Plaintiffs are informed and
22 believe that Dahlman was also accused of, among other things, falsifying the various grading
23 factors and results of required laboratory testing contained on “Certificates of Analysis” and other
24 quality control documents that accompanied customer-bound shipments of tomato product.
25 Plaintiffs are informed and believe that on February 18, 2009, Dahlman pleaded guilty to these
26 charges.

27
28

Financial Statements Discovered to Be Inaccurate

72. Through their investigation, Plaintiffs have learned that SK Foods and RHM were also experiencing significant financial difficulties in 2008 and early 2009.

73. Plaintiffs are informed and believe and thereon allege that SK Foods and RHM's lenders conducted a field audit in or before early February 2009 that revealed a large amount of "unallocated" costs improperly included as eligible collateral in the these companies' borrowing base. Plaintiffs are informed and believe that a proper accounting of the unallocated costs reflected that SK Foods and RHM had been over-advanced on their borrowing since November 30, 2008.

74. Plaintiffs are informed and believe that in or before early February 2009, Defendants and their auditors determined that SK Foods and RHM's unaudited financial statements for fiscal year 2009 were inaccurate. Plaintiffs are informed and believe that SK Foods' audited financial statements for the fiscal year ending June 30, 2008 and SK Foods and RHM's financial statements for the second half of 2007, all of which had been provided to Plaintiffs during the underwriting process, were also determined to be inaccurate and unreliable at that time. Plaintiffs are informed and believe that Defendants discovered that the financial statements submitted to Plaintiffs were inaccurate and unreliable prior to the respective inception dates of the Primary and Excess Policies, and prior to submitting these statements to Plaintiffs, but failed to inform Plaintiffs of these inaccuracies.

75. Plaintiffs are informed and believe that on or about March 26, 2009, SK Foods Group Chief Financial Officer, Shondale Seymour, issued a letter intended for parties who had relied on or were likely to rely on SK Foods Financial Statements, which provided that:

“Subsequent to the issuance of the Annual Financial Statements of SK Foods, LP as of June 30, 2008 and for the year then ended, we have discovered information that the effect on the financial statements cannot be determined without a prolonged investigation. At this point in time, those financial statements should not be relied upon and revised financial statements and auditor’s report will be issued upon completion of the investigation.” Defendants did not provide Plaintiffs with a copy of Ms. Seymour’s March 26, 2009 letter.

The SK Foods Credit Facilities Were Not Extended

76. At the time of the January 30, 2009 meeting between McCormick, Crist, and the AWAC underwriters, the SK Foods Credit Facilities had not been extended as McCormick and Crist had represented, and Plaintiffs are informed and believe that SK Foods and RHM had not come to any agreement regarding its extension with their lenders. Plaintiffs are informed and believe that as of January 30, 2009, the Defendants had no reasonable basis to believe that the SK Foods Credit Facilities had been or would be extended, and, in fact, had reason to believe that it would not be extended because of SK Foods and RHM's poor financial condition and the overstated borrowing base on the SK Foods Credit Facilities.

77. Plaintiffs are informed and believe that in or before early February 2009, Defendants became aware that SK Foods and RHM were in default on the SK Foods Credit Facilities. Plaintiffs are informed and believe that on January 28, 2009, just two days before the January 30, 2009 meeting, the lenders on SK Foods Credit Facilities retained Alvarez & Marsal North America, LLC (“A&M”) to “assess restructuring alternatives” proposed by SK Foods and RHM. Plaintiffs are informed and believe that on February 20, 2009, the lenders delivered SK Foods and RHM a Notice of Default. Plaintiffs are informed and believe that SK Foods and RHM’s defaults included failing to provide borrowing base certificates, deficiencies in the borrowing base, failure to deliver financial statements, and failure to make necessary payments.

Defendants' Answers to Application Questions 6(a) and 6(g) Were False

78. Pursuant to the policies and applicable law, knowledge of Scott Salyer and other SK Foods Group executives is imputed to all of the entity Defendants in this action.

79. Plaintiffs are informed and believe that as a result of SK Foods Group's financial problems, Defendants were aware by or before the Primary Policy inception date of February 19, 2009, that SK Foods, RHM, and SAFF would not be able to continue to operate without additional capital. Defendants anticipated that SK Foods, RHM, and SAFF would reorganize or sell more than 10% of their assets. As such, Defendants' responses to Application questions 6(a) and 6(g) were false.

1 80. Plaintiffs are informed and believe that, prior to the inception of the Primary
2 Policy and intended inception of the Excess Policy, SK Foods and RHM were actively preparing
3 to file a Chapter 11 bankruptcy petition and to sell substantially all of their assets. Plaintiffs are
4 informed and believe that in or before early February 2009, SK Foods and RHM hired financial
5 consultant FTI Consulting (“FTI”). SK Foods and RHM also retained Winston & Strawn LLP
6 (“Winston”) as their bankruptcy and restructuring counsel in or before February 2009. Plaintiffs
7 are informed and believe that from the outset, Winston provided SK Foods and RHM with
8 substantial advice and assistance regarding the structuring of a sale of their assets through
9 Chapter 11 proceedings.

10 81. On or before March 23, 2009, SK Foods and RHM retained Chanin Capital
11 Partners, LP, a Duff and Phelps Company (“Chanin”), as financial advisors and investment
12 bankers. Plaintiffs are informed and believe that since at least that date, Chanin has been actively
13 engaged in identifying and contacting potential purchasers, organizing the sale process, and
14 assisting potential bidders in the conduct of due diligence. Plaintiffs are informed and believe
15 that although Chanin might not have been formally retained until March 23, 2009, SK Foods and
16 RHM actively sought potential purchasers of substantially all of their assets in or before early
17 February 2009. On March 31, 2009, SK Foods and RHM hired Chief Restructuring Officer,
18 Steven Sebastian.

19 82. On May 5, 2009, BMO Capital Markets Financing, Inc., along with several other
20 creditors, filed Chapter 11 Involuntary Petitions against SK Foods and RHM in the U.S.
21 Bankruptcy Court for the Eastern District of California. On May 7, 2009, SK Foods and RHM
22 filed Chapter 11 Voluntary Petitions in the same court.

23 83. The Defendants were obligated to inform Allied World of any material change in
24 their representations to Plaintiffs between the time the St. Paul Application was submitted or
25 other representations were made, and the February 19, 2009 inception of the Primary Policy.
26 Defendants were also obligated to inform AWAC of any material changes in their representations
27 prior to the April 8, 2009 intended inception date for the Excess Policy.
28

84. Defendants were aware, but failed to inform Plaintiffs of the poor financial condition of SK Foods Group in general, and of SK Foods, RHM, and SAFF in particular. Defendants were aware but failed to inform Plaintiffs that certain financial statements provided to Plaintiffs on their behalf as part of the underwriting of the Primary and Excess Policies, were inaccurate and unreliable. Defendants were aware but failed to inform Plaintiffs that the SK Foods Credit Facilities would not be extended, or that SK Foods and RHM were in default on the SK Foods Credit Facilities. Defendants were also aware but failed to inform Plaintiffs that the answers to Application questions 6(a) and 6(g) were false, and that Defendants anticipated a reorganization or sale of substantially all of the assets of SK Foods, RHM, and SAFF.

FIRST CAUSE OF ACTION

**(Rescission of Primary Policy –
Against All Defendants)**

85. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86. Allied World issued the Primary Policy in justifiable reliance on the truth of the representations that were made by Defendants in connection with the application for and underwriting of the Primary Policy relating to the financial condition of SK Foods Group and its constituent companies, including the representations made in the St. Paul Application, the Primary Warranty, SK Foods Group's financial statements submitted to AWAC, and the representations made by SK Foods Group's executives' at the January 30, 2009 meeting with AWAC underwriters.

87. As a result of Plaintiffs' investigation, it is now clear that Defendants made material misrepresentations regarding the financial condition of SK Foods Group and its constituent companies in connection with the application for and underwriting of the Primary Policy, including: (1) falsely representing that Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely representing that Defendants did not anticipate the sale of more than 10% of the assets of SK Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4) falsely representing that the financial health of SK Foods

1 Group, including SK Foods, RHM, and SAFF, was strong and that these entities were profitable
2 in 2008; and (5) falsely representing that the SK Foods Credit Facilities would be extended for
3 the 2009 growing season.

4 88. Plaintiffs investigation has also revealed that Defendants' representation in the
5 Primary Warranty, that "**No Insured** has knowledge ... of any **Wrongful Act** of any **Insured**, or
6 any fact, circumstance or situation which (s)he reasonably believes might result in a **claim** being
7 made against any of the **Insureds**," was false. Plaintiffs are informed and believe that Defendants
8 were aware that an SK Foods employee had been charged with and pleaded guilty to selling
9 tomato products with excessive mold content and falsely certifying required laboratory testing.
10 Plaintiffs are informed and believe that Defendants were aware that circumstances related to the
11 SK Foods employee's guilty plea were reasonably likely to give rise to claims against the
12 Insureds.

13 89. Even absent these representations, Defendants were aware and were under an
14 affirmative duty to disclose that SK Foods Group was experiencing significant financial
15 difficulties, that SK Foods and RHM's lenders would not extend the SK Foods Credit Facilities,
16 that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods, RHM,
17 and SAFF anticipated reorganization and sale of substantially all of their assets, that SK Foods
18 and RHM had actively begun preparations for filing Chapter 11 bankruptcy petitions and were
19 actively seeking a purchaser of substantially all of their assets, that certain financial statements
20 provided to AWAC were not accurate or reliable, and that an SK Foods employee had been
21 charged with and pleaded guilty to selling tomato products with excessive mold content and
22 falsely certifying required laboratory testing – all of which occurred prior to the issuance of the
23 Primary Policy. Defendants knew or reasonably should have known that such information would
24 be material to the terms on which the Primary Policy was issued, and that Allied World had no
25 means of ascertaining that information on its own. Yet, Defendants did not disclose this
26 information.

27 90. The information that Defendants misrepresented, warranted, and omitted was
28 material to Allied World's acceptance of the risk and the hazard assumed in the Primary Policy.

Had Allied World known the truth about the financial condition of SK Foods Group, that a reorganization and sale of substantially all of SK Foods', RHM's and SAFF's assets was anticipated, and the potential that claims might be made against the Insureds as a result of the criminal activity of an SK Foods employee, it would not have issued the Primary Policy, or would not have issued the Primary Policy on the same terms or for the same premium.

91. Accordingly, pursuant to the terms of the Primary Policy, the California Insurance Code, including Insurance Code Sections 331, 359, 447 and 650, and the California Civil Code, including Civil Code Section 1691, Allied World asks that the Court declare that the following coverage provisions in the Primary Policy are void *ab initio* as to all Defendants:

- Directors & Officers Liability Coverage Section, Insuring Agreement C;
- Directors & Officers Liability Coverage Section, Insuring Agreement D, as modified by Endorsement No. 6;
- Employment Practices Liability Coverage Section, in its entirety; and
- Fiduciary Liability Coverage Section, in its entirety, with the exception of coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary Liability Coverage Section.

92. Upon information and belief, Allied World alleges that the Defendants herein dispute Allied World's right to rescind the Primary Policy as set forth above. Therefore, an actual and justiciable controversy exists between Allied World and Defendants regarding Allied World's entitlement to rescission.

SECOND CAUSE OF ACTION

(Reformation of Primary Policy – Against All Defendants)

93. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 92 of this Complaint as if fully set forth herein.

94. To the extent that the Court does not grant Allied World the full relief requested in its First Cause of Action, Allied World requests in the alternative that the Primary Policy be reformed, as further described below.

1 95. As alleged above, Defendants made material misrepresentations regarding the
2 financial condition of SK Foods Group and its constituent companies in connection with the
3 application for and underwriting of the Primary Policy, including: (1) falsely representing that
4 Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely
5 representing that Defendants did not anticipate the sale of more than 10% of the assets of SK
6 Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4)
7 falsely representing that the financial health of SK Foods Group, including SK Foods, RHM, and
8 SAFF, was strong and that these entities were profitable in 2008; and (5) falsely representing that
9 the SK Foods Credit Facilities would be extended for the 2009 growing season.

10 96. As described above, Defendants' representation in the Primary Warranty, that "No
11 **Insured** has knowledge ... of any **Wrongful Act** of any **Insured**, or any fact, circumstance or
12 situation which (s)he reasonably believes might result in a **claim** being made against any of the
13 **Insureds**," was also false.

14 97. Even absent these representations, Defendants were aware and were under an
15 affirmative duty to disclose that SK Foods Group was experiencing significant financial
16 difficulties, that SK Foods and RHM's lenders would not extend the SK Foods Credit Facilities,
17 that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods, RHM,
18 and SAFF anticipated reorganization and sale of substantially all of their assets, that SK Foods
19 and RHM had actively begun preparations for filing Chapter 11 bankruptcy petitions and were
20 actively seeking a purchaser of substantially all of their assets, that certain financial statements
21 provided to AWAC were not accurate or reliable, and that an SK Foods employee had been
22 charged with and pleaded guilty to selling tomato products with excessive mold content and
23 falsely certifying required laboratory testing – all of which occurred prior to the issuance of the
24 Primary Policy. Defendants knew or reasonably should have known that such information would
25 be material to the terms on which the Primary Policy was issued, and that Allied World had no
26 means of ascertaining that information on its own. Yet, Defendants did not disclose this
27 information.

28

1 98. Allied World was ignorant of the falsity of the above referenced representations
2 and unaware of the facts concealed from it, and reasonably and justifiably relied upon the
3 accuracy and truthfulness of those representations in issuing the Primary Policy. Allied World is
4 informed and believes that said misrepresentations were made with the intent to have Allied
5 World issue a policy in error (or, at a minimum, there was reason to know that a policy would be
6 issued in error), and but for the intent to deceive Allied World, or take advantage of Allied
7 World's lack of knowledge concerning the falsity of SK Foods Group's representations, Allied
8 World would not have issued the Primary Policy, or would have issued the Primary Policy on
9 different terms and for a higher premium.

10 99. Allied World relied on the representations and warranties in issuing the Primary
11 Policy on the terms and in the form it was issued, and, as an alternative remedy, Allied World
12 seeks reformation of the Primary Policy by removing the following coverage provisions:

13 • Directors & Officers Liability Coverage Section, Insuring Agreement C;
14 • Directors & Officers Liability Coverage Section, Insuring Agreement D, as
15 modified by Endorsement No. 6;
16 • Employment Practices Liability Coverage Section, in its entirety; and
17 • Fiduciary Liability Coverage Section, in its entirety, with the exception of
18 coverage for "non-Indemnifiable Loss," as that term is used in the Fiduciary
19 Liability Coverage Section.

20 100. Upon information and belief, Allied World alleges that the Defendants herein
21 dispute Allied World's right to have the Primary Policy reformed as set forth above. Therefore,
22 an actual and justiciable controversy exists between Allied World and Defendants regarding
23 Allied World's entitlement to reformation.

24 **THIRD CAUSE OF ACTION**

25 **(Breach of Warranty/Primary Policy –**
26 **Against All Defendants)**

27 101. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1
28 through 100 of this Complaint as if fully set forth herein.

1 102. The Primary Policy provides that the Application “shall be deemed to be attached
2 to, incorporated into, and made a part of this policy” (Preamble to the Primary Policy General
3 Terms & Conditions Section.) “**Application**” is defined as “all signed applications, including any
4 attachments and other materials provided therewith or incorporated therein, submitted in
5 connection with the underwriting of this policy or for any other policy of which this policy is a
6 renewal, replacement or which it succeeds in time.” (Primary Policy General Terms &
7 Conditions Section, Clause 2(a).) The Primary Policy provides that the Application “shall be
8 deemed to be attached to, incorporated into, and made a part of this policy.” (Preamble to the
9 Primary Policy General Terms & Conditions Section.)

10 103. The representations made by Defendants in the St. Paul Application, the Primary
11 Warranty, and the SK Foods Group’s financial statements, all of which were submitted in
12 connection with the underwriting of the Primary Policy, are part of the Application. Because the
13 Application is expressly referred to in and made part of the Primary Policy, the representations
14 made by Defendants in the St. Paul Application, the Primary Warranty, and the SK Foods
15 Group’s financial statements, are express warranties, as that term is used in California Insurance
16 Code § 441.

17 104. These warranties were material to Allied World’s acceptance of the risk. As set
18 forth above, the Primary Policy provides that “[it] is agreed that the **Insurer** has relied upon the
19 information contained in the **Application** in issuing this policy.” (Primary Policy General Terms
20 & Conditions Section, Clause 10, as modified by Endorsement No. 6.)

21 105. As alleged above, Defendants’ answers to questions 6(a) and 6(g) in the St. Paul
22 Application were false, in that Defendants anticipated by or before the Primary Policy inception
23 date of February 19, 2009, that SK Foods, RHM, and SAFF would reorganize or sell more than
24 10% of their assets. In addition, representations in certain financial statements submitted by
25 Defendants to AWAC were inaccurate and unreliable.

26 106. Further, as alleged above, Defendants’ representation in the Primary Warranty,
27 that “**No Insured** has knowledge ... of any **Wrongful Act** of any **Insured**, or any fact,

1 circumstance or situation which (s)he reasonably believes might result in a **claim** being made
2 against any of the **Insureds**,” was also false.

3 107. Had Allied World known the truth about the financial condition of SK Foods
4 Group, that a reorganization and sale of substantially all of SK Foods’, RHM’s and SAFF’s assets
5 was anticipated, and the potential that claims might be made against Insureds as a result of the
6 criminal activity of an SK Foods employee, it would not have issued the Primary Policy.

7 108. By reason of the foregoing, pursuant to California Insurance Code Section 449,
8 Allied World is entitled to a judgment as against all Defendants that the breach of warranty
9 prevented the following provisions of the Primary Policy from attaching to the risk and that it is
10 therefore relieved of any liability or obligation to pay any amounts under these provisions:

- 11 • Directors & Officers Liability Coverage Section, Insuring Agreement C;
- 12 • Directors & Officers Liability Coverage Section, Insuring Agreement D, as
13 modified by Endorsement No. 6;
- 14 • Employment Practices Liability Coverage Section, in its entirety; and
- 15 • Fiduciary Liability Coverage Section, in its entirety, with the exception of
16 coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary
17 Liability Coverage Section.

18 109. Allied World is further entitled to a declaration that Defendants are liable to Allied
19 World for any payments made by Allied World, including any future payments, to or on behalf of
20 any Insureds pursuant to Allied World’s obligations under the Primary Policy.

21 110. Upon information and belief, Allied World alleges that the Defendants herein
22 dispute that a breach of warranty prevented the Primary Policy from attaching to the risk or that
23 Defendants are liable to Allied World for any amounts Allied World is obligated to pay under the
24 Primary Policy. Therefore, an actual and justiciable controversy exists between Allied World and
25 Defendants regarding Allied World’s entitlement to the relief sought herein due to Defendants’
26 breach of the Warranty.

27
28

FOURTH CAUSE OF ACTION

**(Declaratory Relief/Primary Policy –
Against All Defendants)**

111. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 110 of this Complaint as if fully set forth herein.

112. As alleged above, Defendants made material misrepresentations regarding the financial condition of SK Foods Group and its constituent companies in connection with the application for and underwriting of the Primary Policy, including: (1) falsely representing that Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely representing that Defendants did not anticipate the sale of more than 10% of the assets of SK Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4) falsely representing that the financial health of SK Foods Group, including SK Foods, RHM, and SAFF, was strong and that these entities were profitable in 2008; and (5) falsely representing that the SK Foods Credit Facilities would be extended for the 2009 growing season.

113. As described above, Defendants' representation in the Primary Warranty, that "No Insured has knowledge ... of any **Wrongful Act** of any **Insured**, or any fact, circumstance or situation which (s)he reasonably believes might result in a **claim** being made against any of the **Insureds**," was also false.

114. Allied World is informed and believes that Defendants made these misrepresentations either with knowledge of their falsity, or without reasonable grounds for believing them to be true, for the purpose of inducing Allied World to issue the Primary Policy on the terms and in the form it was issued

115. Allied World was ignorant of the falsity of the above referenced representations, and reasonably and justifiably relied upon the accuracy and truthfulness of those representations in issuing the Primary Policy. Had Allied World known the truth about SK Foods Group's financial health, Allied World would have declined to insure Defendants

116. Even absent these representations, Defendants were aware and were under an affirmative duty to disclose that SK Foods Group was experiencing significant financial

1 difficulties, that SK Foods and RHM's lenders would not extend the SK Foods Credit Facilities,
2 that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods, RHM,
3 and SAFF anticipated reorganization and sale of substantially all of their assets, that SK Foods
4 and RHM had actively begun preparations for filing Chapter 11 bankruptcy petitions and were
5 actively seeking a purchaser of substantially all of their assets, that certain financial statements
6 provided to AWAC were not accurate or reliable, and that an SK Foods employee had been
7 charged with and pleaded guilty to selling tomato products with excessive mold content and
8 falsely certifying required laboratory testing – all of which occurred prior to the issuance of the
9 Primary Policy. Defendants knew or reasonably should have known that such information would
10 be material to the terms on which the Primary Policy was issued, and that Allied World had no
11 means of ascertaining that information on its own. Yet, Defendants did not disclose this
12 information. Had Defendants disclosed this information, AWAC would not have issued the
13 Primary Policy.

14 117. Allied World reasonably anticipates that claims under the Primary Policy, whether
15 or not rescinded or reformed as prayed for in this complaint, may be made against Insureds and
16 tendered to Allied World for coverage. Because Allied World would not have issued the Primary
17 Policy but for Defendants' misrepresentations and concealment described above, any payments
18 made by Allied World pursuant to its obligations under the Primary Policy are damages which are
19 the direct and proximate result of Defendants' misrepresentations and concealment.

20 118. Upon information and belief, Allied World alleges that the Defendants herein
21 dispute that any payments that will be made by Allied World pursuant to its obligations under the
22 Primary Policy are damages resulting from Defendants' misrepresentations. Therefore, an actual
23 and justiciable controversy exists between Allied World and Defendants regarding Defendants'
24 liability for these payments.

25 119. Allied World asks that the Court declare that Defendants are liable to Allied World
26 for any payments made by Allied World, including any future payments, to or on behalf of any
27 Insured pursuant to Allied Worlds' obligations under the Primary Policy.

28

FIFTH CAUSE OF ACTION

**(Declaratory Relief/Excess Policy –
Against All Defendants)**

120. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 119 of this Complaint as if fully set forth herein.

121. The Excess Policy was to be issued in consideration for, and on the condition precedent that, the requisite premium be paid.

122. SK Foods Group failed to pay the requisite premium for the Excess Policy.

9 123. Because SK Foods Group failed to pay the requisite premium for the Excess
10 Policy, the Excess Policy was never effectively issued and delivered, and so is inoperative and of
11 no legal force or effect.

12 124. Upon information and belief, AWAC alleges that the Defendants herein dispute
13 that the Excess Policy was never effectively issued and delivered, and contend that the Excess
14 Policy is operative. Therefore, an actual and justiciable controversy exists between AWAC and
15 Defendants regarding whether the Excess Policy is operative.

16 125. AWAC asks that the Court declare that the Excess Policy was never effectively
17 issued and delivered, that the Excess Policy is inoperative and of no legal force or effect, and that
18 AWAC has no duties or obligations under the Excess Policy.

SIXTH CAUSE OF ACTION

**(Rescission of Excess Policy—
Against All Defendants)**

126. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 125 of this Complaint as if fully set forth herein.

127. It is AWAC's position that the Excess Policy was not effectively issued and delivered due to SK Foods Group's failure to pay the requisite premium for the Excess Policy. In the event that the relief sought in the Fifth Cause of Action asserted herein is not granted to AWAC, and the Excess Policy is found to have been issued and delivered, AWAC alleges that the Excess Policy was issued in justifiable reliance on the truth of the representations that were

1 made by Defendants in connection with the application for and underwriting of the Excess Policy
2 relating to the financial condition of SK Foods Group and its constituent companies, including the
3 representations made in the St. Paul Application, the Primary Warranty, the Warranty for Higher
4 Limits, SK Foods Group's financial statements submitted to AWAC, and the representations
5 made by SK Foods Group's executives' at the January 30, 2009 meeting with AWAC
6 underwriters.

7 128. As alleged above, it is now clear that Defendants made material misrepresentations
8 regarding the financial condition of SK Foods Group and its constituent companies in connection
9 with the application for and underwriting of the Excess Policy, including: (1) falsely representing
10 that Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely
11 representing that Defendants did not anticipate the sale of more than 10% of the assets of SK
12 Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4)
13 falsely representing that the financial health of SK Foods Group, including SK Foods, RHM, and
14 SAFF, was strong and that these entities were profitable in 2008; and (5) falsely representing that
15 the SK Foods Credit Facilities would be extended for the 2009 growing season.

16 129. As described above, Defendants' representation in the Primary Warranty and
17 Warranty for Higher Limits, that "**No Insured** has knowledge ... of any **Wrongful Act** of any
18 **Insured**, or any fact, circumstance or situation which (s)he reasonably believes might result in a
19 **claim** being made against any of the **Insureds**," was also false.

20 130. Even absent these representations, Defendants were aware and were under an
21 affirmative duty to disclose that SK Foods Group was experiencing significant financial
22 difficulties, that SK Foods and RHM's lenders would not extend the SK Foods Credit Facilities,
23 that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods' and
24 RHM's lenders issued a Notice of Default with respect to the SK Foods Credit Facilities, that SK
25 Foods' and RHM's filing of Chapter 11 bankruptcy petitions were imminent and that SK Foods
26 and RHM were actively seeking a purchaser of substantially all of their assets, that certain
27 financial statements provided to AWAC were not accurate or reliable, and that an SK Foods
28 employee had been charged with and pleaded guilty to selling tomato products with excessive

1 mold content and falsely certifying required laboratory testing – all of which occurred prior to the
2 intended inception of the Excess Policy. Defendants knew or reasonably should have known that
3 such information would be material to the terms on which the Excess Policy was to be issued, and
4 that AWAC had no means of ascertaining that information on its own. Yet, Defendants did not
5 disclose this information.

6 131. The information that Defendants misrepresented, warranted, and omitted was
7 material to AWAC's acceptance of the risk and the hazard assumed in the Excess Policy, if any.
8 Had AWAC known the truth about the financial condition of SK Foods Group, that a
9 reorganization and sale of substantially all of SK Foods', RHM's and SAFF's assets was
10 anticipated, and the potential that claims might be made against the Insureds as a result of the
11 criminal activity of an SK Foods employee, it would not have agreed to provide the requested
12 insurance, or would have done so on different terms and for a different premium.

13 132. Accordingly, pursuant to the terms of the Excess Policy, the California Insurance
14 Code, including Insurance Code Sections 331, 359, 447 and 650, and the California Civil Code,
15 including Civil Code Section 1691, AWAC asks that the Court declare that the Excess Policy is
16 void *ab initio* as to all Defendants with respect to the following coverage provisions in the
17 Primary Policy:

- 18 • Directors & Officers Liability Coverage Section, Insuring Agreement C;
- 19 • Directors & Officers Liability Coverage Section, Insuring Agreement D, as
20 modified by Endorsement No. 6;
- 21 • Employment Practices Liability Coverage Section, in its entirety; and
- 22 • Fiduciary Liability Coverage Section, in its entirety, with the exception of
23 coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary
24 Liability Coverage Section.

25 133. Upon information and belief, AWAC alleges that the Defendants herein dispute
26 AWAC's right to rescind the Excess Policy as set forth above. Therefore, an actual and
27 justiciable controversy exists between AWAC and Defendants regarding AWAC's entitlement to
28 rescission.

SEVENTH CAUSE OF ACTION

(Reformation of Excess Policy – Against All Defendants)

134. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 133 of this Complaint as if fully set forth herein.

135. It is AWAC's position that the Excess Policy was not effectively issued and delivered due to SK Foods Group's failure to pay the requisite premium for the Excess Policy. In the event that the relief sought in the Fifth or Sixth Causes of Action asserted herein is not granted to AWAC, AWAC requests in the alternative that the Excess Policy be reformed, as further described below.

136. As alleged above, Defendants made material misrepresentations regarding the financial condition of SK Foods Group and its constituent companies in connection with the application for and underwriting of the Excess Policy, including: (1) falsely representing that Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely representing that Defendants did not anticipate the sale of more than 10% of the assets of SK Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4) falsely representing that the financial health of SK Foods Group, including SK Foods, RHM, and SAFF, was strong and that these entities were profitable in 2008; and (5) falsely representing that the SK Foods Credit Facilities would be extended for the 2009 growing season.

137. As described above, Defendants' representation in the Primary Warranty and
Warranty for Higher Limits, that "No **Insured** has knowledge ... of any **Wrongful Act** of any
Insured, or any fact, circumstance or situation which (s)he reasonably believes might result in a
claim being made against any of the **Insureds**," was also false.

138. Even absent these representations, Defendants were aware and were under an affirmative duty to disclose that SK Foods Group was experiencing significant financial difficulties, that SK Foods and RHM's lenders would not extend the SK Foods Credit Facilities, that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods' and RHM's lenders issued a Notice of Default with respect to the SK Foods Credit Facilities, that SK

1 Foods' and RHM's filing of Chapter 11 bankruptcy petitions were imminent and that SK Foods
2 and RHM were actively seeking a purchaser of substantially all of their assets, that certain
3 financial statements provided to AWAC were not accurate or reliable, and that an SK Foods
4 employee had been charged with and pleaded guilty to selling tomato products with excessive
5 mold content and falsely certifying required laboratory testing – all of which occurred prior to the
6 intended inception of the Excess Policy. Defendants knew or reasonably should have known that
7 such information would be material to the terms on which the Excess Policy was to be issued, and
8 that AWAC had no means of ascertaining that information on its own. Yet, they did not disclose
9 this information.

10 139. AWAC was ignorant of the falsity of the above referenced representations and
11 unaware of the facts concealed from it, and reasonably and justifiably relied upon the accuracy
12 and truthfulness of those representations in agreeing to issue the Excess Policy. AWAC is
13 informed and believes that said misrepresentations were made with the intent to have AWAC
14 issue a policy in error (or, at a minimum, there was reason to know that a policy would be issued
15 in error), and but for the intent to deceive AWAC, or take advantage of AWAC's lack of
16 knowledge concerning the falsity of SK Foods Group's representations, AWAC would not have
17 agreed to issue the Excess Policy, or would have issued the Excess Policy on different terms and
18 for a higher premium.

19 140. AWAC relied on the representations and warranties in agreeing to issue the Excess
20 Policy on the terms and in the form it was to be issued, and, as an alternative remedy, AWAC
21 seeks reformation of the Excess Policy by removing the excess coverage provided with respect to
22 the following coverage provisions of the Primary Policy:

23 • Directors & Officers Liability Coverage Section, Insuring Agreement C;
24 • Directors & Officers Liability Coverage Section, Insuring Agreement D, as
25 modified by Endorsement No. 6;
26 • Employment Practices Liability Coverage Section, in its entirety; and

27
28

1 • Fiduciary Liability Coverage Section, in its entirety, with the exception of
2 coverage for “non-Indemnifiable Loss,” as that term is used in the Fiduciary
3 Liability Coverage Section.

4 141. Upon information and belief, AWAC alleges that the Defendants herein dispute
5 AWAC’s right to have the Excess Policy reformed as set forth above. Therefore, an actual and
6 justiciable controversy exists between AWAC and Defendants regarding AWAC’s entitlement to
7 reformation.

8 **EIGHTH CAUSE OF ACTION**

9 **(Breach of Warranty/Excess Policy –
10 Against All Defendants)**

11 142. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1
12 through 141 of this Complaint as if fully set forth herein.

13 143. It is AWAC’s position that the Excess Policy was not effectively issued and
14 delivered due to SK Foods Group’s failure to pay the requisite premium for the Excess Policy. In
15 the event that the relief sought in the Fifth Cause of Action asserted herein is not granted to
16 AWAC, and the Excess Policy is found to have been issued and delivered, AWAC seeks
17 alternative relief for breach of Warranty as set forth herein.

18 144. As alleged above, the Excess Policy was to be issued “subject to all terms,
19 conditions, agreements and limitations of the Primary Policy,” unless otherwise provided.
20 (Excess Policy Section II.F.1.) The Excess Policy also expressly follows the representation terms
21 of the Primary Policy. (Excess Policy Endorsement No. 3.)

22 145. The representations made by Defendants in the St. Paul Application, the Primary
23 Warranty, the Warranty for Higher Limits, and the SK Foods Group’s financial statements, all of
24 which were submitted in connection with the underwriting of the Primary and Excess Policies, are
25 part of the Application. Because the Application is expressly referred to in and made part of the
26 Primary Policy, the representations made by Defendants in the St. Paul Application, the Primary
27 Warranty, the Warranty for Higher Limits, and the SK Foods Group’s financial statements, are
28 express warranties, as that term is used in California Insurance Code § 441.

1 146. These warranties were material to AWAC's acceptance of the risk.

2 147. As alleged above, Defendants' answers to questions 6(a) and 6(g) in the St. Paul
3 Application were false, in that Defendants anticipated that SK Foods, RHM, and SAFF would
4 reorganize or sell more than 10% of their assets. In addition, representations in certain financial
5 statements submitted by Defendants to AWAC were inaccurate and unreliable.

6 148. Further, as alleged above, Defendants' representation in the Primary Warranty and
7 the Warranty for Higher Limits, that "No **Insured** has knowledge ... of any **Wrongful Act** of any
8 **Insured**, or any fact, circumstance or situation which (s)he reasonably believes might result in a
9 **claim** being made against any of the **Insureds**," was also false.

10 149. Had AWAC known the truth about the financial condition of SK Foods Group,
11 that a reorganization and sale of substantially all of SK Foods', RHM's and SAFF's assets was
12 anticipated, and the potential that claims might be made against the Insureds as a result of the SK
13 Foods employee's criminal activity, it would not have agreed to issue the Excess Policy.

14 150. By reason of the foregoing, pursuant to California Insurance Code Section 449,
15 Allied World is entitled to a judgment as against all Defendants that the breach of warranty
16 prevented the following provisions of the Primary Policy from attaching to the risk and that it is
17 therefore relieved of any liability or obligation to pay any amounts under these provisions:

- 18 • Directors & Officers Liability Coverage Section, Insuring Agreement C;
- 19 • Directors & Officers Liability Coverage Section, Insuring Agreement D, as
20 modified by Endorsement No. 6;
- 21 • Employment Practices Liability Coverage Section, in its entirety; and
- 22 • Fiduciary Liability Coverage Section, in its entirety, with the exception of
23 coverage for "**non-Indemnifiable Loss**," as that term is used in the Fiduciary
24 Liability Coverage Section.

25 151. AWAC is further entitled to a declaration that Defendants are liable to AWAC for
26 any payments made by AWAC, including any future payments, to or on behalf of any Insureds
27 pursuant to AWAC's obligations under the Excess Policy.

152. Upon information and belief, AWAC alleges that the Defendants herein dispute that a breach of warranty prevented the Excess Policy from attaching to the risk or that Defendants are liable to AWAC for any amounts AWAC is obligated to pay under the Excess Policy. Therefore, an actual and justiciable controversy exists between AWAC and Defendants regarding AWAC's entitlement to the relief sought herein due to Defendants breach of the Warranty.

NINTH CAUSE OF ACTION

**(Declaratory Relief/Excess Policy –
Against All Defendants)**

153. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 152 of this Complaint as if fully set forth herein.

154. It is AWAC's position that the Excess Policy was not effectively issued and delivered due to SK Foods Group's failure to pay the requisite premium for the Excess Policy. In the event that the relief sought in the Fifth Cause of Action asserted herein is not granted to AWAC, and the Excess Policy is found to have been issued and delivered, AWAC seeks the alternative relief sought here.

155. As alleged above, Defendants made material misrepresentations regarding the financial condition of SK Foods Group and its constituent companies in connection with the application for and underwriting of the Excess Policy, including: (1) falsely representing that Defendants did not anticipate a reorganization of SK Foods, RHM, or SAFF; (2) falsely representing that Defendants did not anticipate the sale of more than 10% of the assets of SK Foods, RHM or SAFF; (3) the submission of inaccurate and unreliable financial statements; (4) falsely representing that the financial health of SK Foods Group, including SK Foods, RHM, and SAFF, was strong and that these entities were profitable in 2008; and (5) falsely representing that the SK Foods Credit Facilities would be extended for the 2009 growing season.

156. As described above, Defendants' representation in the Primary Warranty and the
Warranty for Higher Limits, that "No Insured has knowledge ... of any **Wrongful Act** of any

1 **Insured**, or any fact, circumstance or situation which (s)he reasonably believes might result in a
2 **claim** being made against any of the **Insureds**,” was also false.

3 157. AWAC is informed and believes that Defendants made these misrepresentations
4 either with knowledge of their falsity, or without reasonable grounds for believing them to be
5 true, for the purpose of inducing AWAC to issue the Excess Policy on the terms and in the form it
6 was issued.

7 158. AWAC was ignorant of the falsity of the above-referenced representations, and
8 reasonably and justifiably relied upon the accuracy and truthfulness of those representations in
9 agreeing to issue the Excess Policy. Had AWAC known the truth about SK Foods Group’s
10 financial health, AWAC would not have agreed to issue the Excess Policy.

11 159. Even absent these representations, Defendants were aware and were under an
12 affirmative duty to disclose that SK Foods Group was experiencing significant financial
13 difficulties, that SK Foods and RHM’s lenders would not extend the SK Foods Credit Facilities,
14 that SK Foods and RHM were in default on the SK Foods Credit Facilities, that SK Foods’ and
15 RHM’s lenders issued a Notice of Default with respect to the SK Foods Credit Facilities, that SK
16 Foods’ and RHM’s filing of Chapter 11 bankruptcy petitions were imminent and that SK Foods
17 and RHM were actively seeking a purchaser of substantially all of their assets, that certain
18 financial statements provided to AWAC were not accurate or reliable, and that an SK Foods
19 employee had been charged with and pleaded guilty to selling tomato products with excessive
20 mold content and falsely certifying required laboratory testing – all of which occurred prior to the
21 intended inception of the Excess Policy. Defendants knew or reasonably should have known that
22 such information would be material to the terms on which the Excess Policy was to be issued, and
23 that AWAC had no means of ascertaining that information on its own. Yet, they did not disclose
24 this information. Had Defendants disclosed this information, AWAC would not have agreed to
25 issue the Excess Policy.

26 160. AWAC reasonably anticipates that claims under the Excess Policy (had it been
27 effectively issued and delivered), and whether or not rescinded or reformed as prayed for in this
28 complaint, may be made against Insureds and tendered to AWAC for coverage. Because AWAC

1 would not have agreed to issue the Excess Policy but for Defendants' misrepresentations
2 described above, any payments made by AWAC pursuant to its obligations under the Excess
3 Policy, if any, are damages which are the direct and proximate result of Defendants'
4 misrepresentations.

5 161. Upon information and belief, AWAC alleges that the Defendants herein dispute
6 that any payments that will be made by AWAC pursuant to its obligations under the Excess
7 Policy, if any, are damages resulting from Defendants' misrepresentations. Therefore, an actual
8 and justiciable controversy exists between AWAC and Defendants regarding Defendants' liability
9 for these payments.

10 162. AWAC asks that the Court declare that Defendants are liable to AWAC for any
11 payments made by AWAC, including any future payments, to or on behalf of any Insureds
12 pursuant to any obligation AWAC may have under the Excess Policy.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for judgment, as follows:

15 **FIRST CAUSE OF ACTION**

16 A. Rescinding the following coverage provisions in the Primary Policy, and
17 declaring them void *ab initio* and of no legal force or effect whatsoever as to
18 all Defendants named herein: (1) Directors & Officers Liability Coverage
19 Section, Insuring Agreement C; (2) Directors & Officers Liability Coverage
20 Section, Insuring Agreement D, as modified by Endorsement No. 6; (3)
21 Employment Practices Liability Coverage Section, in its entirety; and (4)
22 Fiduciary Liability Coverage Section, in its entirety, with the exception of
23 coverage for "**non-Indemnifiable Loss**," as that term is used in the Fiduciary
24 Liability Coverage Section;

25 B. Awarding costs of suit herein; and

26 C. Awarding such other and further relief as this Court deems just and proper.

SECOND CAUSE OF ACTION

- A. Reforming the Primary Policy to remove the following coverage provisions:
 - (1) Directors & Officers Liability Coverage Section, Insuring Agreement C;
 - (2) Directors & Officers Liability Coverage Section, Insuring Agreement D, as modified by Endorsement No. 6; (3) Employment Practices Liability Coverage Section, in its entirety; and (4) Fiduciary Liability Coverage Section, in its entirety, with the exception of coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary Liability Coverage Section;
- B. Awarding costs of suit herein; and
- C. Awarding such other and further relief as this Court deems just and proper.

THIRD CAUSE OF ACTION

- A. Declaring the following provisions of the Primary Policy never attached to the risk, and that Allied World is therefore relieved of any liability or obligation to pay any amounts under these provisions: (1) Directors & Officers Liability Coverage Section, Insuring Agreement C; (2) Directors & Officers Liability Coverage Section, Insuring Agreement D, as modified by Endorsement No. 6; (3) Employment Practices Liability Coverage Section, in its entirety; and (4) Fiduciary Liability Coverage Section, in its entirety, with the exception of coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary Liability Coverage Section;
- B. Declaring that Defendants are liable to Allied World for any payments made by Allied World, including any future payments, to or on behalf of any Insureds pursuant to Allied World’s obligations under the Primary Policy;
- C. Awarding prejudgment interest at the legal rate, according to proof;
- D. Awarding costs of suit herein; and
- E. Awarding such other and further relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION

- A. A declaration that Defendants are liable to Allied World for any payments made by Allied World, including any future payments, to or on behalf of any Insureds pursuant to Allied Worlds' obligations under the Primary Policy;
- B. Awarding prejudgment interest at the legal rate, according to proof;
- C. Awarding costs of suit herein; and
- D. Awarding such other and further relief as this Court deems just and proper.

FIFTH CAUSE OF ACTION

- A. A declaration that the Excess Policy was never effectively issued and delivered, that the Excess Policy is inoperative and of no legal force or effect, and that AWAC has no duties or obligations under the Excess;
- B. Awarding costs of suit herein; and
- C. Awarding such other and further relief as this Court deems just and proper.

SIXTH CAUSE OF ACTION

- A. Rescinding the Excess Policy and declaring it void *ab initio* as to all Defendants with respect to the following coverage provisions in the Primary Policy: (1) Directors & Officers Liability Coverage Section, Insuring Agreement C; (2) Directors & Officers Liability Coverage Section, Insuring Agreement D, as modified by Endorsement No. 6; (3) Employment Practices Liability Coverage Section, in its entirety; and (4) Fiduciary Liability Coverage Section, in its entirety, with the exception of coverage for “**non-Indemnifiable Loss**,” as that term is used in the Fiduciary Liability Coverage Section;
- B. Awarding costs of suit herein;
- C. Awarding such other and further relief as this Court deems just and proper.

SEVENTH CAUSE OF ACTION

A. Reforming the Excess Policy to remove the excess coverage provided with respect to the following coverage provisions of the Primary Policy: (1) Directors & Officers Liability Coverage Section, Insuring Agreement C; (2)

1 Directors & Officers Liability Coverage Section, Insuring Agreement D, as
2 modified by Endorsement No. 6; (3) Employment Practices Liability Coverage
3 Section, in its entirety; and (4) Fiduciary Liability Coverage Section, in its
4 entirety, with the exception of coverage for “**non-Indemnifiable Loss**,” as that
5 term is used in the Fiduciary Liability Coverage Section;

6 B. Awarding costs of suit herein; and
7 C. Awarding such other and further relief as this Court deems just and proper.

8 **EIGHTH CAUSE OF ACTION**

9 A. Declaring that under the Excess Policy, excess coverage with respect to the
10 following provisions of the Primary Policy never attached to the risk, and that
11 AWAC is therefore relieved of any liability or obligation to pay any amounts
12 under these provisions: (1) Directors & Officers Liability Coverage Section,
13 Insuring Agreement C; (2) Directors & Officers Liability Coverage Section,
14 Insuring Agreement D, as modified by Endorsement No. 6; (3) Employment
15 Practices Liability Coverage Section, in its entirety; and (4) Fiduciary Liability
16 Coverage Section, in its entirety, with the exception of coverage for “**non-
17 Indemnifiable Loss**,” as that term is used in the Fiduciary Liability Coverage
18 Section;

19 B. Declaring that Defendants are liable to AWAC for any payments made by
20 AWAC, including any future payments, to or on behalf of any Insureds
21 pursuant to AWAC’s obligations, if any, under the Excess Policy;

22 C. Awarding prejudgment interest at the legal rate, according to proof;

23 D. Awarding costs of suit herein; and

24 E. Awarding such other and further relief as this Court deems just and proper.

25 **NINTH CAUSE OF ACTION**

26 A. A declaration that Defendants are liable to AWAC for any payments made by
27 AWAC, including any future payments, to or on behalf of any Insureds
28 pursuant to AWAC’s obligations, if any, under the Excess Policy;

- B. Awarding prejudgment interest at the legal rate, according to proof;
- C. Awarding costs of suit herein; and
- D. Awarding such other and further relief as this Court deems just and proper.

Dated: _____, 2010

Respectfully submitted,

TROUTMAN SANDERS LLP

By:

Terrence R. McInnis
Kevin F. Kieffer
Peter R. Lucier
*Attorneys for Plaintiffs Allied World
National Assurance Company and Allied
World Assurance Company (U.S.) Inc.*

DEMAND FOR JURY TRIAL

Plaintiffs Allied World National Assurance Company and Allied World Assurance Company (U.S.) Inc. hereby demand a trial by jury as to all claims asserted herein as allowed by law.

Dated: , 2010

Respectfully submitted,

TROUTMAN SANDERS LLP

By:

Terrence R. McInnis
Kevin F. Kieffer
Peter R. Lucier
*Attorneys for Plaintiffs Allied World
National Assurance Company and Allied
World Assurance Company (U.S.) Inc.*

Exhibit 2

July 27, 2009

Kathryn N. Richter
Direct Dial 415-364-6742
Direct Fax 415-364-6785
E-mail krichter@schnader.com

VIA ELECTRONIC MAIL

Mark E. Smith, CPCU
Area Vice President
Arthur J. Gallagher & Co.
Insurance Brokers of California, Inc.
45 E. River Park Place West, Suite 408
Fresno, CA 93720

Allied World National Assurance Company
ATTN: Professional Liability Underwriting
199 Water ST
New York, NY 10038

Re: In re SK Foods, LP and RHM/Colusa Canning
Allied World National D&O Policy #SC0051081/001A
Allied World National D&O Policy # C011427
Continental Casualty Company, Policy # 287368096
Allied World Assurance Policy # C011818
National Union Fire Insurance Co Policy # 01-766-57-95

Dear Mr. Smith and Representatives of Allied World National Assurance Company:

As you know, we are counsel to Bradley Sharp, the Chapter 11 Trustee appointed by the Court in the Chapter 11 proceedings pending as to SK Foods LP and RHM Industrial/ Specialty Foods, dba, Colusa Canning Co. (collectively "Debtors.") You have kindly agreed to accept all tenders made by Mr. Sharp under the above policies on behalf of the insureds and to forward same to the appropriate carriers as broker for SK Foods and RHM/Colusa Canning and related entities. We appreciate and rely on your assistance in this regard.

As you are likely aware, a Trustee in Bankruptcy stands in the shoes of the insured for purposes of insurance coverage, although coverage is interpreted as broader vis-à-vis the Insured vs.

Schnader Harrison Segal & Lewis LLP

NEW YORK PENNSYLVANIA CALIFORNIA WASHINGTON, DC NEW JERSEY DELAWARE

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Insured provisions. We note that there is also an express exception to the "Insured v. Insured" exclusion for claims asserted by a bankruptcy trustee, at ¶3(i)(vi) of the Allied World National policy D&O section. In this regard, claims within the meaning of the policy definitions have been asserted by the Trustee against companies and individuals insured under the above policies. On or about June 12, 2009, the Trustee filed an adversary Complaint in the United States Bankruptcy Court for the Eastern District of California captioned Sharp v. Blackstone Ranch Corp., No. 09-29162, a copy of which is enclosed. Defendants are the Salyer-Related entities/subsidiary companies (as listed on the policy endorsements identifying subsidiary and related companies covered under the policies) and certain individuals; other individuals are identified in the Complaint. The individuals include Directors, Officers, Executives or Employees of Insured companies. The Complaint sets forth the wrongful conduct of the Insureds and seeks injunctive and declaratory relief as more specifically set forth in the Complaint. There is coverage for this claim under the D&O coverage provisions of the above policies.

As the sale and transfer of the majority of the assets of the Debtors has been concluded, the Trustee has had an opportunity to begin the process of evaluating further claims to be made on behalf of the Debtor Estates. While it is early in that process, we take this opportunity to provide notice of circumstances under the above policies, in that the Trustee will be asserting additional claims against the Insureds. Said claims shall be based upon wrongful acts of the insureds resulting in loss to the Debtors' Estates. In addition to the matters stated and asserted in the Complaint, the Trustee believes that there are additional wrongful acts, breaches of duty, breaches of trust, acts, errors, omissions, neglect, misstatements and/or misleading statements that have occurred within the Debtors and other subsidiary insured entities, resulting in damage and loss to the Debtor Estates. It is believed that these wrongful acts and/or omissions were committed or omitted by Scott Salyer and other of the Insureds' Directors, Officers, Executives and/or Employees, including but not limited to Mark McCormick, Richard Lawrence, Eric Schwartz, Alan Huey, Scott Grewal, and within the scope of their duties on behalf of the insured(s).

The Trustee asserts that Scott Salyer, Mark McCormick, Richard Lawrence, Eric Schwartz, Alan Huey, Scott Grewal, and others acting in their respective capacities as the Insureds' Directors, Officers, Executives and/or Employees, have acted wrongfully in directing the course of action taken by the Debtors and/or the subsidiary companies/additional insureds, resulting in damage and loss to the Debtors' estates. The Trustee is continuing in his investigation to determine the specific acts, loss and damage, but asserts that it includes, but is not limited to: transferring cash, assets, liabilities, from one entity to another; failing to respect the integrity and separateness of the entities; failing to act at arm's length; failing to properly capitalize the entities; allowing improperly supported/improperly documented intercompany transfers; exercising dominion and control over the entities; intermingling of the entities assets and resources; acting as the Directors, Officers, Executives of multiple of the insured entities although the interests of the entities have not always been aligned, resulting in conflicts of interest; improperly conveying the assets of certain of the Debtors and/or insured entities to others of the insured entities; directing the sale of the Wastewater Discharge real estate parcels; surrendering the Debtors' opportunity to

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acquire the Wastewater Discharge parcels to allow another of the insured entities to make the acquisition; failing to make payments under certain contractual obligations lease agreements and technology leases including the Microsoft financing agreement; failing to repay Debtors for certain "pre-pays" and then changing the character of said "pre-pay" to a different character; improperly charging the Debtors for certain personal expense items and/or improperly authorizing reimbursements for certain personal expenses; improperly authorizing both pre-petition and post-petition transfers of assets of the Debtors' estates.

Please forward this letter to the appropriate individuals at the insurance companies as the Trustee's tender and notice of the above claims and/or circumstances under the above policies. Do not hesitate to call should you have questions.

Best regards,

Kathryn N. Richter

KNR